



May 13, 2002

Ms. Gay Dodson, R.Ph.  
Executive Director/Secretary  
Texas State Board of Pharmacy  
333 Guadalupe Street, Box 21  
Austin, Texas 78701-3942

OR2002-2509

Dear Ms. Dodson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 162789.

The Texas State Board of Pharmacy (the "board") received a request for information relating to its disposition of a complaint. You state that the board has released the requested information that it believes to be open to the public. You claim that the remaining information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you raise and have reviewed the information you submitted.

We first note that this request for information asks a series of questions. The board has not specifically referred to these questions in requesting this decision. Chapter 552 of the Government Code does not require a governmental body to perform legal research for a requestor or to answer general questions. *See* Open Records Decision No. 563 at 8 (1990). However, the governmental body must make a good-faith effort to relate a request to information that the governmental body holds or to which it has access. *See* Open Records Decision No. 561 at 8 (1990). We therefore assume that the board has made the required good-faith effort to relate the requestor's questions to information that is within the board's custody or control.

We also note that the board has not complied with section 552.301 of the Government Code in requesting this decision. Section 552.301 prescribes procedures that a governmental body must follow in asking this office to decide whether requested information may be withheld from public disclosure. Section 552.301(b) provides that "[a] governmental body must ask for the attorney general's decision and state the exceptions that apply . . . not later than the tenth business day after the date of receiving the written request [for information]." Section 552.302 provides that "[i]f a governmental body does not request an attorney general decision as provided by Section 552.301 . . . the information requested in writing is

presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information.”

You indicate that the board received this request for information on February 22, 2002. The board then had ten business days, or until and including March 8, 2002, in which to request this decision under section 552.301(b). The board’s request for this decision was submitted to this office on March 11, 2002. Thus, the board has not complied with section 552.301. Therefore, the requested information is presumed to be public and must be released under section 552.302, unless there is a compelling reason to withhold any of the information from public disclosure. *See also Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ). The presumption that information is public under section 552.302 can generally be overcome by demonstrating that the information is confidential by law or that third-party interests are at stake. *See Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982)*. In this instance, the board raises section 552.101 of the Government Code. As this exception can provide a compelling reason for non-disclosure under section 552.302, we will consider your arguments.

Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This section encompasses information that other statutes make confidential. The board raises section 552.101 in conjunction with section 565.055 of the Occupations Code. Section 565.055 provides in part:

(a) The board or the board’s authorized representative may investigate and gather evidence concerning any alleged violation of this subtitle or a board rule.

(b) Information or material compiled by the board in connection with an investigation, including an investigative file of the board, is confidential and not subject to:

(1) disclosure under Chapter 552, Government Code[.]

(c) Notwithstanding Subsection (b), information or material compiled by the board in connection with an investigation may be disclosed to:

(1) a person involved with the board in a disciplinary action against the license holder;

(2) an entity in another jurisdiction that licenses or disciplines pharmacists or pharmacies;

(3) a pharmaceutical or pharmacy peer review committee as described under Chapter 564;

(4) a law enforcement agency; or

(5) a person engaged in bona fide research, if all information identifying a specific individual has been deleted.

Occ. Code § 565.055. You indicate that the submitted information consists of an investigative file that was prepared by board staff in connection with a consumer complaint. You explain that this information relates to fact-gathering concerning the complaint and the board's evaluation of the validity of the complaint. You do not indicate, nor does it appear to this office, that the requestor is a person to whom the board may disclose investigative information under section 565.055(c). Therefore, based on your representations, we find that the submitted information is confidential under section 565.055(b) and must be withheld from disclosure under section 552.101 of the Government Code. *See also* Open Records Decision No. 474 at 2-3 (1987) (addressing statutory predecessor).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

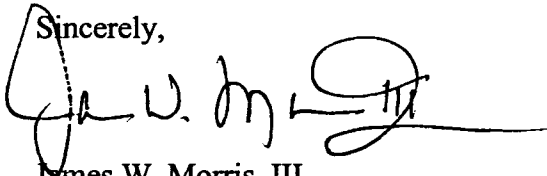
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J. W. Morris, III", with a long horizontal flourish extending to the right.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 162789

Enc: Submitted documents

c: Ms. Joyce Green  
542 Corliss Street  
San Antonio, Texas 78220  
(w/o enclosures)